fusal did not deprive the applicant of proper medical treatment, while in the principal case it probably did. It has been said that the carrier is under a duty to transport an insane man, but not in the baggage car. See *Owens* v. *Macon & B. R. Co.*, 119 Ga. 230, 232, 46 S. E. 87, 88. Surely the carrier has some duty to transport such unfortunates. It is an extraordinary duty, however, and its performance should be left to the carrier's discretion; and if this discretion is reasonably exercised, the carrier should be under no liability.

CONSENT — EFFECT IN PARTICULAR ACTIONS — RECOVERY AGAINST SALOON KEEPER UNDER CIVIL DAMAGE LAWS. — The plaintiff voluntarily became intoxicated. While in that condition he lost control of a team which he attempted to drive and suffered serious injuries. He now sues the liquor seller, his wife having previously recovered for loss of support. *Held*, that he may recover. *Henkel* v. *Boudreau*, 143 N. W. 236 (Neb.).

The plaintiff's husband died from the effects of liquor sold him by the defendant. It was proved that the plaintiff herself furnished the money with which the liquor was bought. She now sues the saloon keeper for destroying her means of support. *Held*, that she may recover. *Colman* v. *Loeper*, 143 N. W. 295 (Neb.).

Both of these actions were brought under a statute providing that whoever sells liquor "shall pay all damages that the community or individuals may sustain in consequence of such traffic." COBBEY'S ANN. STATUTES, § 7165. Under the Nebraska decisions the defense *volenti non fit injuria* will not bar an action under this statute. *Buckmaster* v. *McElroy*, 20 Neb. 557, 31 N. W. 76. This position has been criticized by textbook writers. See BLACK, INTOXICATING LIQUORS, § 291, and cases there collected. And in general, under similar statutes, recovery has been refused to the drunkard himself for damages caused by his own intoxication. *Lenand* v. *Linck*, 71 Ill. App. 358; *Brooks* v. *Cook*, 44 Mich. 617. Also the wife who consents to the purchase of the liquor has been barred. *Engleken* v. *Hilger*, 43 Iowa 563; *Rosencrantz* v. *Shoemaker*, 60 Mich. 4, 26 N. W. 794. *Contra*, *Eays* v. *Lilly*, 217 Ill. 582, 75 N. E. 552 (where, however, this fact was allowed to mitigate damages). At common law it was not a tort to sell intoxicating liquor to an able bodied man. *Cruse* v. *Aden*, 127 Ill. 231, 20 N. E. 73. And a statute which creates a new remedy must ordinarily be construed as subject to the general rules as to recovery at common law. *Western Union Tel. Co.* v. *McDaniel*, 103 Ind. 294, 2 N. E. 709. Upon this reasoning the Nebraska cases seem wrong. But, on the other hand, the Nebraska result is correct if the clear intent of the legislature was to include the drunkard himself among those protected. Where a statutory duty of protection to those he employs has been imposed upon an employer, precisely this result has been reached, for the employee is not allowed to bar himself by assuming the risk. *Narramore* v. *Cleveland Ry. Co.*, 96 Fed. 298. It has been urged in explanation of this that the civil liability is created to insure achieving the desired result, because to bar suit by the employee will render the statute nugatory. See 26 HARV. L. REV. 646. This reasoning, however, does not apply to the liquor statutes, since these statutes, by giving every injured member of the community the right to sue, provide the required deterrent. And furthermore, it is difficult to believe that the legislature set out deliberately to create new affirmative rights in favor of drunkards. For further discussion of what statutory torts are barred by consent, see 25 HARV. L. REV. 463.

CONSTITUTIONAL LAW — PERSONAL RIGHTS — CONSTITUTIONALITY OF NEGRO SEGREGATION IN SEPARATE RESIDENCE DISTRICTS UNDER THE FOURTEENTH AMENDMENT. — An ordinance of the city of Baltimore provided that no white persons or negroes should thereafter reside in blocks then occupied for residences exclusively by the other race. *Held*, that the ordinance does not

conflict with the Fourteenth Amendment to the Constitution of the United States. *State* v. *Gurry*, 88 Atl. 546.

For a discussion of the principles involved, see NOTES, p. 270.

CONSTRUCTIVE TRUSTS — MISCONDUCT BY NON-FIDUCIARIES — CAN ONE GUILTY OF HOMICIDE ACQUIRE TITLE BY HIS CRIME? — In probate proceedings the plaintiff took out a summons asking that one of the defendants be struck out of the proceedings as having no interest. This defendant had been convicted of the manslaughter of the testator, and under two of the alleged wills being propounded took an interest in the estate. *Held*, that the defendant must be struck out of the proceedings. *Hall* v. *Knight and Baxter*, 135 L. T. J. 550 (Ct. of Appeal).

The majority of cases have held that the slayer as heir or devisee retains both legal and beneficial interest in property inherited from his victim. *Shellenberger* v. *Ransom*, 41 Neb. 631, 59 N. W. 935; *Carpenters Estate*, 170 Pa. St. 203, 32 Atl. 637. A few courts have held that the felon does not take even the legal interest. *Perry* v. *Strawbridge*, 209 Mo. 621, 108 S. W. 641. This has been held to apply as well to the case of manslaughter as to murder. *Lundy* v. *Lundy*, 24 Can. Sup. Ct. 650. But see *Gollnik* v. *Mengel*, 112 Minn. 349, 351, 128 N. W. 292, 293. This view which excludes the claimant guilty of homicide seems directly opposed to the statutes of Wills and of Distributions, for neither statute excludes a slayer from the inheritance. A third view, which does not violate the statute, is that the criminal takes legal title by the statute, but equity will decree him constructive trustee to hold the property for the innocent heirs. See *Ellerson* v. *Westcott*, 148 N. Y. 149, 154, 42 N. E. 540, 542; AMES, LECTURES ON LEGAL HISTORY, 310. The principal case, the first English one directly in point, appears to adopt this view, excluding the manslayer from the proceedings, probably by applying the equity rule under the Judicature Act, 36 & 37 Vict. c. 66, § 24. The constructive trust theory is open to the objection that the other heirs who claim as *cestuis* were deprived by the homicide merely of a naked chance that the deceased, had he lived, might have revoked the will, or in the case of intestacy, that the heir responsible for the death might have predeceased the ancestor. If a constructive trust is looked upon broadly as a remedy, it may be proper to deprive the felon of property unconscionably obtained, permitting the heirs, as next in line, to receive a windfall. It is, however, somewhat anomalous to allow persons without title and not intended by anyone to have an interest, to claim property in court because of another's wrong that worked them no substantial injury. Furthermore, the constructive trust doctrine is not completely effective, because if the criminal sells to a *bonâ fide* purchaser, the heirs are cut off. It is submitted that legislative action disqualifying one guilty of the homicide from taking even the legal title is better than the creation of a constructive trust. Two states have such statutes. Iowa Code (Supplement 1907), § 3386; Cal. Civ. Code (1906) § 1409. The civil law expressly provides that the slayer shall be deprived of the property to which he succeeds. 4 TUILLIER, DROIT CIVIL FRANÇAIS, 113; 3 WINDSCHEID, PANDECKTENRECHTS, §§ 669, 670; La. Civ. Code, 1560, 1710.

CRIMINAL LAW — FORMER JEOPARDY — ACQUITTAL BEFORE COURT WHERE SOME OF JUSTICES WERE INELIGIBLE. — Defendants had been indicted for violating a coal-mining statute, and had been acquitted by a court, of which two of the justices were ineligible. A writ of *certiorari* was asked to quash the acquittal. *Held*, that the defendants having been once in jeopardy, the writ will not lie. *Rex* v. *Simpson*, 136 L. T. J. 10.

The fundamental principle, that a man shall not be put twice in peril for the same offense, being embodied in the national and state constitutions, has